

TREASURER OF STATE[781]

Notice of Intended Action

**Proposing rule making related to Iowa ABLE savings plan trust
and providing an opportunity for public comment**

The Treasurer of State hereby proposes to amend Chapter 20, “Iowa ABLE Savings Plan Trust,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 12I.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 12I.

Purpose and Summary

This proposed rule making amends Chapter 20 to comply with provisions of the federal Consolidated Appropriations Act (CAA) of 2023, which included the SECURE 2.0 Act. Additionally, this rule making makes changes necessary for the continued efficient administration of the Iowa ABLE savings plan trust.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Treasurer of State for a waiver of the discretionary provisions, if any, pursuant to 781—Chapter 19.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Office of the Treasurer of State no later than 4:30 p.m. on March 28, 2023. Comments should be directed to:

Molly Widen
Office of the Treasurer of State
Lucas State Office Building, First Floor
321 East 12th Street
Des Moines, Iowa 50319
Email: molly.widen@tos.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definition of "Resident" in rule **781—20.2(12I)**:

"*Resident*" means someone living in one location with the intent to remain there permanently or for a definite, indefinite or indeterminable length of time.

ITEM 2. Amend rule **781—20.2(12I)**, definitions of "Account owner," "Authorized individual," "Federal penalty tax," "Fund" and "Section 529A," as follows:

"*Account owner*" means the account owner ~~and designated beneficiary of the account~~ as defined in Iowa Code section 12I.1. An account owner must be an eligible individual. References herein to an account owner include an authorized individual ~~or an authorized agent~~ acting on behalf of an account owner.

"*Authorized individual*" means ~~an individual~~ a person or entity authorized to act on the account owner's behalf with respect to the account in accordance with these rules and Section 529A. The authorized individual may neither have nor acquire any beneficial interest in the account during the account owner's lifetime and must administer the account for the benefit of the account owner.

"*Federal penalty tax*" means ~~a 10 percent~~ the additional federal tax imposed on the earnings portion of certain nonqualified withdrawals.

"*Fund*" means the underlying investments that are mutual funds, ~~or~~ exchange-traded funds, bank products and any other investments in which assets of the plan are invested through the investment options.

"*Section 529A*" means Section 529A of the Internal Revenue Code and regulations promulgated or proposed thereunder.

ITEM 3. Rescind the definitions of "Authorized agent" and "Investment managers" in rule **781—20.2(12I)**.

ITEM 4. Amend subrule 20.4(1) as follows:

20.4(1) The plan shall have a form of participation agreement which must be used to establish ~~accounts~~ an account. The participation agreement shall be signed and dated in accordance with the requirements of the plan disclosure documents by the account owner to verify that the account owner agrees to the terms and conditions of the plan.

ITEM 5. Amend rule 781—20.5(12I) as follows:

781—20.5(12I) Eligible individual. An account owner must be an eligible individual. ~~An individual is an eligible individual for a taxable year if, during that year, either (1) the individual is entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act ("benefits eligibility"), or (2) a disability certification meeting specified requirements is filed with the Secretary in accordance with Section 529A ("certification eligibility"). In all cases, the blindness or disability must have occurred before the individual's twenty-sixth birthday.~~ This rule establishes the following other requirements for opening an account:

20.5(1) An account owner may be a resident of any state.

20.5(2) An account owner must be a U.S. citizen or resident alien.

20.5(3) An account owner must, ~~on signing a participation agreement, provide the plan administrator with~~ have a valid social security number or tax identification number.

20.5(4) An account owner must have a valid permanent U.S. street address.

20.5(5) ~~No account owner~~ eligible individual may have more than one account in an ABLÉ plan in existence at the same time. A prior ABLÉ account that has been closed does not prohibit the subsequent creation of another ABLÉ account for the same account owner. As part of the enrollment process, the person establishing the account owner will be required to certify under penalties of perjury that the eligible individual for whom the account owner is being established has no other ABLÉ account (except in the case of a rollover from an account that will terminate with the completion of the rollover).

20.5(6) If an individual desires to open an account based on benefits eligibility, the individual must make the following certifications under penalties of perjury that:

a. The individual is entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act and has received a benefit verification letter from the Social Security Administration and agrees to retain and provide the letter (or a genuine copy of the letter or other evidence) to the plan, the plan administrator, the IRS, or the U.S. Department of the Treasury upon request; and

b. ~~The individual's disability was present before the individual's twenty-sixth birthday~~ meets the qualifications set forth in Section 529A.

20.5(7) If an individual desires to open an account based on certification eligibility, the individual must certify under penalties of perjury that the individual:

a. Has a medically determinable physical or mental impairment which results in marked or severe functional limitations and which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months;

b. Is blind (within the meaning of the Social Security Act); or

c. Has a condition listed in the "List of Compassionate Allowances Conditions" maintained by the Social Security Administration.

The individual must also certify that the disability, blindness, or compassionate allowances condition ~~occurred before the date of the individual's twenty-sixth birthday~~ meets the qualifications set forth in Section 529A, and that the individual has a copy of the individual's diagnosis relating to the relevant impairment(s), signed by a physician meeting the criteria of Social Security Act Section 1861(r)(1). The individual must also agree to retain and provide a copy of the diagnosis and related information to the plan upon request.

20.5(8) By maintaining an account, the account owner is making a continuing certification that the account owner is an eligible individual. It is the account owner's responsibility to notify the plan in writing if the account owner ceases to be an eligible individual. It is also the account owner's responsibility to notify the plan in writing if the account owner subsequently requalifies as an eligible individual.

ITEM 6. Amend rule 781—20.6(12I) as follows:

781—20.6(12I) Authorized individual.

20.6(1) An eligible individual may establish an account. If an eligible individual (whether a minor or adult) is unable to establish the individual's own account, an account may be established on behalf of the eligible individual by the eligible individual's agent under a power of attorney or, if none, by a conservator or legal guardian, spouse, parent, sibling, grandparent of the eligible individual, or a representative payee appointed for the eligible individual by the Social Security Administration, in that order, or as otherwise provided in Section 529A.

20.6(2) The plan may accept a certification, made under penalties of perjury, from the person seeking to establish an account (1) as to the basis for the person's authority to establish the account, and (2) that there is no other person with a higher priority, set forth in Section 529A, to establish the account.

20.6(3) ~~An authorized individual may establish an account on behalf of the account owner and~~ make investment decisions for the account owner. An authorized individual may neither have nor acquire any beneficial interest in the account during the account owner's lifetime and must administer the account for the benefit of the account owner. Whenever an action is required to be taken by an account owner in connection with an account, the authorized individual may take such action on behalf of the account owner.

~~20.6(1)~~ **20.6(4)** A parent or legal guardian of an account owner who is a minor may be the authorized individual for that account owner. An adult account owner with legal capacity may appoint an individual as an authorized individual. In addition, a conservator legally appointed for an adult account owner who lacks legal capacity may be an authorized individual.

~~20.6(2)~~ **20.6(5)** An authorized individual may be required to provide supporting documentation to the plan, including documentation of the authority of the individual to establish the account, in accordance with the plan disclosure documents. The plan may freeze an account until the plan receives the required documentation and is able to verify the authorized individual's authority to open, transact and maintain an account on behalf of the account owner.

ITEM 7. Amend rule 781—20.7(12I) as follows:

~~781—20.7(12I) Authorized agent~~ **Interested party.** An account owner with legal capacity or an authorized individual may designate an authorized agent to act on the account. ~~An authorized agent may be appointed with varying levels of authority in accordance with the plan disclosure documents. Certain levels of authority will require the completion of a power of attorney form~~ interested party to receive information on the account.

ITEM 8. Amend subrule 20.8(1) as follows:

20.8(1) Appropriate forms must be completed on paper, online or via telephone (whichever is applicable for the requested actions) to perform the actions set forth in and in accordance with the plan disclosure documents. Current forms are available online at IABLE.gov. Among the actions which require the completion of an appropriate form are opening and closing an account, transferring ownership rights of an account to another person, changing investments, requesting a full or partial withdrawal, requesting a rollover, and assigning an authorized ~~agent~~ individual.

ITEM 9. Amend paragraph **20.9(1)“a”** as follows:

a. Freeze an account, suspend account services or do both: (1) if the plan administrator receives notice of a dispute regarding account assets or account ownership, including notice of the death of an account owner (until appropriate documentation is received and the plan administrator reasonably believes that it is lawful to transfer account ownership); (2) if the plan administrator reasonably believes a fraudulent transaction may occur or has occurred; ~~or~~ (3) in the event of a challenge to the authority of an individual to establish or act on an account; or (4) when a minor account owner reaches the age of majority (until appropriate documentation is received);

ITEM 10. Rescind subrule **20.10(4)**.

ITEM 11. Amend rule 781—20.11(12I), catchwords, as follows:

781—20.11(12I) Substitution or change of beneficiary; balance transfer.

ITEM 12. Adopt the following new subrule 20.11(3):

20.11(3) All or a portion of an account owner's account balance may be transferred to another account within the plan but only during the life of the account owner. At the time of the transfer, the transferee must be an eligible individual and a member of the family of the transferor-account owner.

ITEM 13. Rescind rule 781—20.12(12I) and adopt the following new rule in lieu thereof:

781—20.12(12I) Transfer of account on death. The account owner has the right to designate a successor account owner in the event of the death of the account owner in accordance with these rules and the plan disclosure documents.

20.12(1) An account owner may designate a successor account owner to succeed to the ownership of the account upon the death of the account owner provided that the successor account owner must be another eligible individual who is a member of the family of the account owner. To designate a successor account owner at death, the account owner shall complete the appropriate form and provide any requested documentation.

20.12(2) Upon the death of the account owner, the successor account owner must notify the plan by submitting a completed participant enrollment form and a certified copy of the death certificate. The change in ownership of the account will become effective for the successor participant once this paperwork has been received and processed. The amount to be transferred is subject to payment of certain expenses as set forth in the Internal Revenue Code.

ITEM 14. Amend rule 781—20.13(12I) as follows:

781—20.13(12I) Qualified withdrawals. This rule establishes the procedures for the payment of qualified withdrawals. A qualified withdrawal is a withdrawal from an account that is used to pay for any qualified disability expenses of the account owner.

20.13(1) The account owner must initiate the withdrawal for qualified disability expenses. The account owner must file the appropriate form with the plan administrator.

20.13(2) Qualified withdrawals will be paid as provided in the plan disclosure documents.

20.13(3) Each qualified withdrawal will be comprised partly of contributions and partly of earnings, based upon the same proportion that contributions and earnings comprise the account owner's account at the time of the withdrawal.

20.13(4) Funds that are distributed to or for the benefit of an account owner shall be reported to the IRS on a 1099-Q in the tax year in which the withdrawal is made. The account owner will receive the 1099-Q for any withdrawals made to or as instructed by the account owner. The account owner receiving the 1099-Q must determine whether the withdrawal was made for a qualified disability expense or was a nonqualified withdrawal.

ITEM 15. Amend rule 781—20.14(12I), introductory paragraph, as follows:

781—20.14(12I) Nonqualified withdrawals and participation agreement cancellation. An account owner ~~may~~ has the exclusive right to cancel a participation agreement and may do so at will. This rule establishes the criteria for nonqualified withdrawals from an account or for the cancellation of a participation agreement.

ITEM 16. Amend rule 781—20.15(12I) as follows:

781—20.15(12I) Account statements. Account owners will receive quarterly account statements, which will include the total value of the account and a list of transactions within the account for that quarterly period. Account owners will receive account statements, transaction confirmations, and other personal correspondence in paper format unless the account owner signs up for electronic delivery. Fees may vary as provided in the disclosure documents depending on the method of delivery selected.

ITEM 17. Amend rule 781—20.16(12I) as follows:

781—20.16(12I) State tax treatment. The maximum amount that may be deducted per year for Iowa income tax purposes by an individual who is a resident of this state for contributions to an account shall not exceed the maximum deductible amount determined for the year pursuant to Iowa Code section 12D.3(1). The adjusted annual maximum shall be communicated to account owners in the plans and to the public in any reasonable manner determined by the plan administrator. State inheritance tax treatment of interests in the plan shall be as provided in Iowa Code section 450.4(9).